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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,227	12/19/2001	Yehuda Yamay	2786-0186P	2035

2292 7590 02/24/2004  
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FALLS CHURCH, VA 22040-0747

EXAMINER
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HUYNH, LOUIS K

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 02/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/914,227

Applicant(s)

YAMAY, YEHUDA

Examiner

Louis K. Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 12, 2004 has been entered.

***Priority***

2. Acknowledgment is made of applicant's claim for foreign priority based on two (2) applications filed in Israel: 128710 filed 02/24/1999 and 132708 filed 11/02/1999. A copy of the certified copy of the Israel 128710 has been received and placed in the file wrapper. However, a copy of a certified copy of the Israel 132708 has not been received.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 28-29: "relative vertical displacement of the holder and the spacer member so as to form proximate to the rim a confined space" is not a proper process step for performing an action. Perhaps "vertically displacing the membrane and the holder into sealing engagement

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with the spacer member so as to form proximate to the rim a confined space" would be appropriate for such a process step.

Claim 1, line 39-40: "displacement of said pressing place other to bring the closure membrane in contact with said rim" is confusing and not a proper process step for performing an action. Perhaps "displacing said pressing plate to bring the closure membrane into contact with said rim" would be appropriate for such a process step.

Claim ~~8~~<sup>7</sup>, lines 13-14: "in the sate of sealing engagement" is not understood.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO'400 (WO 91/03400) in view of Noel et al. (US 5,718,101).

WO'400 discloses a method for packaging a product in a container including the steps of: introducing a food product into a cup-shaped container (3) having a peripheral rim (9); placing the container into a holder (21) beneath and concentric with a spacer (65); providing above the rim of the container (14) a flat lid-forming film (5); relatively vertically displacing the holder (21) and the spacer (65) to form a space defined by the container (3), the holder (21), the spacer (65) and the lid-forming film (5); introducing a replacement gas through a gas inlet (97) formed in the spacer (65); displacing a pressing plate (103) to bring the lid-forming film into contact with the rim of the container (3) and to seal the lid-forming film to the rim of the container (3).

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The method of WO'400 meets all of applicant's claimed subject matter but lacks the specific teaching of the lid-forming film being gas impermeable.

However, Noel teaches a method of packaging product in a container (14) wherein the container (14) with the product therein is gas tight sealed with a first gas permeable plastic film and a second gas impermeable plastic film, and wherein the first and the second film can be integrally formed into a single lid forming film (col. 2, lines 10-13). Since the method of WO'400 includes the use of a second lid (1) in order to provide a gas tight sealed package; therefore, it would have been obvious to an ordinary skilled person in the art, at the time the invention was made, to have modified the method of WO'400 by having provided a gas impermeable lid forming film, as taught by Noel, in order to form a gas tight sealed package without the use of the second lid.

With respect to Claim 4, in the modified method of WO'400 the gas impermeable lid forming means would have been plastic film (Noel, col. 11, line 26-47).

With respect to Claims 5 and 6, the space defined by the container (3), the holder (21), the spacer (65) and the lid-forming film is brought into communication with the external atmosphere/vacuum via the gas outlet (93) (WO'400; FIG. 8).

7. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO'400 (WO 91/03400) in view of Noel et al. (US 5,718,101) as applied to Claim 1 above; and further in view of Grune et al. (US 5,071,667).

The modified method of WO'400 meets all of applicant's claimed subject matter but lacks the specific teaching of the product being a pasty material. However, Grune teaches that pasty material such as milk-containing product is gas-treated to promote expulsion of air from

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the container prior to the final sealing step in order to prolong storage life of the product (column 2, lines 22-42). Therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have further modified the method of Noel et al. by having pasty material as the product to be gas treated, as taught by Grune et al., in order to prolong storage life of the pasty material.

8. Claims 7-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO'400 (WO 91/03400).

WO'400 discloses an apparatus for forming a hermetically sealed container including: a holder (21) having an axially projecting skirt for holding a container (3) having flange (9); a spacer (65) having an opening engageable with a lid-forming film (5) for defining a space defined by the container (3), the holder (21), the spacer (65) and the lid-forming film (5); a means (89) for bringing the spacer (65) into sealing engagement against the lid-forming film (5) and the holder (21); a gas inlet (97) formed on the spacer (65) and a gas outlet (93); an axially displaceable heat sealing mechanism (103) for displacing the lid-forming film (5) toward the container (3) through the opening of the spacer (65) and attaching the lid-forming film to the flange (9) of the container (3) to form a gas-tight seal; a vacuum forming cup (81) sealingly engageable with the bottom surface of the holder (21); and an axially displaceable trimming member (133) for trimming the lid-forming film (5) around the flange (9) of the container (3).

Regarding the recitation of the container not being filled entirely by the product in the preamble of the claim, the container (3) used in the apparatus of WO'400 is capable of receiving a product less than the container volume, and the volume, shape and/or type of the product to be

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packaged is obvious as a matter of engineering design choice and thus does not differentiate the claimed apparatus over the applied prior art satisfying the claimed structural limitations.

Regarding the limitation of the lid-forming film being membrane, the apparatus of WO'400 is capable of utilizing such gas-impermeable material as the lid forming film and thus such limitation does not differentiate the claimed apparatus over the applied prior art satisfying the claimed structural limitations.

***Conclusion***

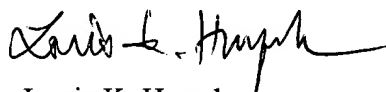
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is (703) 306-5694. The examiner can normally be reached on M-F from 9:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



LH  
February, 23, 2004



Louis K. Huynh  
Patent Examiner  
Art Unit 3721